STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 29, 2005
v	No. 255767 Kent Circuit Court
SANDRA JOYCE PARKER, Defendant-Appellant.	LC No. 02-005041-FH

Before: Bandstra, P.J., and Neff and Markey, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of one count of first-degree child abuse, MCL 750.136b(2), and one count of second-degree child abuse, MCL 750.136b(3), for acts perpetrated on her adopted daughter, A.P. (d.o.b. 11/20/89). She was also convicted of one count of third-degree child abuse, MCL 750.136b(5), for acts perpetrated on her adopted son, A.L.P. (d.o.b. 9/3/85).[1] The jury was unable to reach a verdict on an additional charge of third-degree child abuse against another adopted son, C.P. (d.o.b. 2/4/86). Defendant was sentenced to concurrent prison terms of 95 months to 15 years for the first-degree child abuse conviction, two to four years for the second-degree child abuse conviction, and one to two years for the third-degree child abuse conviction. She appeals as of right. We affirm.

On May 2, 2002, A.L.P. ran from defendant's house and hid behind a neighbor's garage. He claimed to have been beaten by defendant and, after being discovered by the neighbor, the police were called to investigate. During the investigation, the police and protective service workers received information from A.L.P., A.P., C.P., and T.P. (d.o.b. 12/21/1983), an older adopted child living in defendant's house. Allegations of abuse were substantiated, a protective services case file was opened, and defendant was charged with several counts of child abuse. The children provided similar stories of abuse while living with defendant. They claimed that they were beaten by defendant, were called derogatory names, were pulled out of school for not doing chores properly, and were required to sleep on the floor and eat most of their meals off newspapers on the floor. The youngest child, A.P., was particularly brutalized in the household

[1] The judgment of sentence incorrectly identifies the third-degree child abuse conviction as falling under MCL 750.136b(4).

by both defendant and the other adopted children, who testified that they harmed A.P. at the direction of defendant, because they were afraid of being punished if they did not comply with defendant's demands. Defendant also referred to the children as "nothin' but checks." She received adoption subsidies totaling approximately $3,000 a month for adopting the child victims.

A.P. was routinely chained up at night. Defendant started restraining A.P., apparently because she took or snuck food without asking. At first, A.P. was locked in the bathroom for her indiscretions. When she learned how to escape from the bathroom, however, defendant began chaining her. A.P. was first chained to the front or side doors. Eventually, she was chained to a weight bench in the basement every night. She wore a diaper at night and was not provided with a blanket. A.P. suffered numerous injuries and indignities while living with defendant. She had her head held under water in the bathtub, had her head pushed into the toilet, was kicked and punched, was forced to hold lit firecrackers, and had nail polish remover poured on her eyes. Defendant sometimes put her foot on A.P.'s neck, causing A.P. to have seizures, and defendant occasionally used a hammer to beat her. A.P. often went without food, and she was observed eating out of trashcans at her school. On one occasion, her brothers put a noose or belt around her neck in the attic, but they did not follow through with hanging her.[2] When the police removed A.P. from defendant's home in May 2002, she had physical injuries consistent with her story, including chipped teeth, several fractured ribs in various stages of healing, a fractured knee, extensive bruising, difficulty walking, ligature marks on her ankles, and scars. A.P. was diagnosed at the hospital as suffering from battered-child syndrome. The abuse was determined to be nonaccidental. When A.L.P. was removed from the home, he had bruises over his right knee, abrasions on his left knee, old scars on his abdomen, scrapes on his right upper arm, marks from being hit on top of the head, and swelling. C.P. had a knot on the top of his head from being hit with a stick.

Before May 2002, numerous referrals about the Parker family were made to both the Family Independence Agency (FIA) and the adoptive services agency through which defendant adopted the children. With the exception of an early confirmation that defendant had used corporal punishment on a child, the other investigations were closed because abuse allegations were not substantiated. Defendant's adopted children testified that they never informed authorities about defendant's conduct because they were afraid of getting into more trouble with defendant. Defendant instructed them about how to respond if questioned. C.P. attempted to report abuse on one occasion in June 2000, but the police did not find evidence that he was abused. T.P. once reported that defendant called the children derogatory names. Defendant beat her for making her statement. Defendant also threatened a foster child who lived in the home for several months in 2002. The foster child observed the abuse perpetrated on the adopted children, and defendant warned him that, if he revealed what occurred in the house, she would chase him down like "Perry Mason." On May 2, 2002, A.L.P. ran away after being beaten, explaining that he could not remain silent any longer.

[2] It was contested whether the "hanging" incident took place at defendant's direction or at the impetus of the boys themselves.

Defendant defended the child abuse charges by pursuing theories that A.P. was a self-mutilator, an issue that was contested at trial, and that her allegations against defendant were the result of undiagnosed schizophrenia and were not true. Defendant claimed that the older, adopted children perpetrated abuse on A.P. and each other without defendant's consent or direction. She believed she was set up by the children, and maintained that she was not their abuser. The jury convicted defendant of three of the four charges against her.

I

Defendant first argues that she was denied her constitutional right to a jury drawn from a fair cross section of the community because no African-Americans were in her jury venire. US Const, Am VI; Const 1963, art 1, § 14. Defendant preserved her Sixth Amendment challenge by raising it during voir dire, before the jury was sworn. *People v Hubbard (After Remand)*, 217 Mich App 459, 465; 552 NW2d 493 (1996). Questions concerning the systemic exclusion of minorities from jury venires are generally reviewed de novo. *People v McKinney*, 258 Mich App 157, 161; 670 NW2d 254 (2003).

> "A criminal defendant is entitled to an impartial jury drawn from a fair cross section of the community." To establish a prima facie violation of the fair cross-section requirement, the defendant bears the burden of proving "that a distinctive group was underrepresented in his venire or jury pool, and that the underrepresentation was the result of systematic exclusion of the group from the jury selection process." [*Id*. (citations omitted).]

In this case, defendant did not establish a prima facie violation of the fair cross-section requirement in the trial court. There is no dispute that defendant is an African-American, a member of a distinct minority group. Further, there is no dispute that African-Americans were entirely absent from defendant's jury venire. However, defendant made no attempt to prove that the underrepresentation of African-Americans in her jury venire was the result of systematic exclusion from the jury selection process. Her counsel merely made a vague reference to "the recent history in Kent County with respect to this very issue," and inquired whether "something can be placed on the record to assure counsel and Mrs. Parker that all safeguards have been put in place, and that the safeguards have insured [that] random selection . . . has been followed through." Defendant's co-counsel expressed that she did not know why there were no African-Americans in the venire. The trial court indicated that defendant's rights were protected and that the system was carefully checked and cross-checked on a weekly basis.

On appeal, defendant argues that the trial court failed to provide positive proof that adequate safeguards were in place. Defendant ignores that it was her burden to prove that there was a systematic exclusion of African-Americans. *McKinney*, *supra*. Because defendant failed to make out a prima facie case, and failed to create a factual record to support her claim, appellate consideration of the issue is forfeited. *People v Dixon*, 217 Mich App 400, 404; 552 NW2d 663 (1996).

We note that defendant improperly expands the record on appeal and cites newspaper articles from the *Grand Rapids Press*, which reported that there was an underrepresentation of African-Americans in Kent County jury venires in 2001 and 2002. The error was detected in July 2002. Defendant's newly offered evidence does not support a claim that there may have

been a systematic problem with underrepresentation of African-Americans in 2004, when defendant's case was tried.

We also reject defendant's request for a remand for "further fact finding." The request is not only untimely, MCL 7.211(C)(1)(a), but it is not supported by an affidavit or offer of proof regarding the facts that would be established at a hearing. MCL 7.211(C)(1)(a)(ii).

II

Defendant next argues that she did not receive the effective assistance of counsel at trial. Our review of this issue is limited to errors apparent on the record because no *Ginther*[3] hearing was held. *People v Williams*, 223 Mich App 409, 414; 566 NW2d 649 (1997). In order to prevail on a claim that counsel was ineffective, a defendant must show that counsel's performance fell below an objective standard of reasonableness and that, but for defense counsel's errors, there is a reasonable probability that the result of the proceeding would have been different. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994). Defendant must affirmatively demonstrate that counsel's performance was objectively unreasonable and so prejudicial as to deprive her of a fair trial. *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994). She must overcome a strong presumption that the assistance of her counsel was sound trial strategy. *Stanaway*, *supra*; *People v Tommolino*, 187 Mich App 14, 17; 466 NW2d 315 (1991).

Defendant first argues that counsel was ineffective for failing to object to or move to suppress statements made by defendant to Jill Urbane, a child protective services worker who interviewed defendant in jail. In a cursory argument, defendant argues that Urbane was acting with or at the request of the police when she interviewed defendant and, therefore, she should have provided defendant with *Miranda*[4] warnings before interviewing her. Defendant maintains that because Urbane failed to do so, her statements to Urbane should have been suppressed. We find nothing in the record to support defendant's claim that Urbane was acting with or at the request of the police when she questioned defendant in her capacity as a child protective services worker assigned to the children's case files. More importantly, even if Urbane was required to provide *Miranda* warnings to defendant, an issue we need not reach, defendant cannot demonstrate that counsel was ineffective for failing to move to suppress the statements.

Defendant's statements, in large part, were consistent with major aspects of her defense theories. Urbane talked to defendant at the Kent County Jail for approximately 20 to 30 minutes. Defendant stated that she had previously reported to authorities that A.P. needed to be institutionalized. She believed that her adopted sons, A.L.P. and C.P., were messing with A.P., and she thought that the children were trying to "set her up." Defendant reported that A.P. picked at herself, digging under her eyes until they turned black, and that A.P. had a mark on her back from C.P.'s shoe. Defendant claimed that she made A.P. wear diapers only after talking to others who had cared for A.P. in the past. She denied kicking A.P., pouring anything into her

[3] *People v Ginther*, 390 Mich 436, 441; 212 NW2d 922 (1973).

[4] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

eyes, stepping on her neck or knees, hitting her toes with a hammer, holding her underwater, instructing the boys to hold her underwater, or placing A.P.'s head in the toilet. Defendant also denied withholding food from any of her children, with the exception of cake. Defendant explained that both the scar between A.P.'s eyes and her broken tooth were caused accidentally. She also claimed that chains found in her basement belonged to her husband, and that she once told the boys to remove the chains from A.P. when she saw them on her.

Defendant made some incriminating statements while talking to Urbane. She stated that, on May 2, 2002, she "fussed" at the children "real good." She also stated that she was "going to deal with" A.P. for another year. And she admitted to locking the kids "downstairs." These statements, however, were overshadowed by the many exculpatory statements made during the interview, which bolstered her defense.

In light of the nature of the statements and defense counsel's cross-examination of Urbane about the statements, defendant cannot overcome the presumption that counsel did not move to suppress the statements as a matter of sound trial strategy. This Court will not second-guess counsel on matters of trial strategy. *People v Knapp*, 244 Mich App 361, 386-387 n 7; 624 NW2d 227 (2001). "[E]ven if defense counsel was ultimately mistaken [with respect to a strategic decision], this Court will not assess counsel's competence with the benefit of hindsight." *Id*., quoting *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999). Indeed, defendant does not argue or attempt to persuade this Court that, but for the error, the outcome of her trial would have been different. *Stanaway, supra*. For these reasons, we reject this claim of error.

Defendant additionally argues that counsel was ineffective for failing to object to prior bad-acts evidence. Specifically, she argues that the testimony of Amy Weiss-Hill, a child protective services worker who investigated claims of abuse in March 1999, was inadmissible under MRE 404(b) because the required notice was not provided, because no proper purpose was identified for the admission of the evidence under MRE 404(b), because the evidence was irrelevant where it involved two children who were not victims in the present case, and because the statements were inadmissible hearsay. With the exception of the relevancy argument, these unpreserved arguments are abandoned. Defendant fails to explain or rationalize why the evidence needed to comply with MRE 404(b) to be admitted, and fails to explain her argument that the evidence was hearsay. An appellant may not merely announce a position and leave it to this Court to discover and rationalize the basis for that position, nor may an appellant give only cursory treatment to an argument with little or no citation to authority. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998).

Defendant argues that the evidence was irrelevant because it related to two children who were not victims of the charges brought against her. We disagree. Defendant was tried on a charge of third-degree child abuse related to C.P. Weiss-Hill testified that, on March 3, 1999, she received information from two people with respect to alleged abuse. She investigated and determined that C.P. had missed 23 days of school up to that point during the 1998-1999 school year. Weiss-Hill went to the Parker home to discuss the situation with defendant and talk to defendant about other allegations, including that T.P. had a black eye and had reported that defendant called the children "bitches" and "bastards." Defendant was hostile and abrasive during the conversation and would not allow Weiss-Hill to move beyond the foyer of the Parker home. Weiss-Hill subsequently went to the school that one of defendant's natural children

attended and spoke to that child. While they were conversing, defendant appeared, demanded to know why Weiss-Hill was talking to her child, and threatened Weiss-Hill. In April 1999, Weiss-Hill again went to the Parker home for interviews. She testified that there were many pending allegations related to all of the adopted children in the home. When asked if any of the interviews stood out in her mind, Weiss-Hill testified that C.P. turned his back to her, refused to look at her, and cried throughout his interview. Nevertheless, he stated that everything was fine at home. Weiss-Hill testified that she closed her investigation because the allegations of abuse were unsubstantiated. But she never forgot C.P.'s reaction when denying the allegations. Contrary to defendant's argument, Weiss-Hill's testimony was not clearly unrelated to the victims of the charged offenses.

The evidence was also relevant. MRE 401. There was evidence that, before May 5, 2002, numerous prior reports of abuse were unsubstantiated. A.P., C.P., and A.L.P. testified that they previously denied allegations of abuse when interviewed because they knew that they would be in trouble with defendant if they did not do so. When Urbane testified, defendant elicited, on cross-examination, that Urbane had looked at Weiss-Hill's report from March 3, 1999. When C.P. and A.L.P. were interviewed about allegations of abuse, A.L.P. laughed and denied the allegations. Weiss-Hill's subsequent testimony, that C.P. had cried and refused to look at her when denying the allegations, had a tendency to make the prosecutor's theory, that the children were afraid of defendant, more probable than not. As such, it was relevant. MRE 401. Defense counsel was not ineffective for failing to object to Weiss-Hill's testimony on grounds of relevance.

More importantly, regardless whether Weiss-Hill's testimony should have been met with an objection on any ground, defendant cannot demonstrate that the outcome of her case was affected by Weiss-Hill's testimony. *Stanaway, supra*. Before Weiss-Hill testified, Urbane had already testified in great detail about the March 1999 investigation without objection. In fact, Urbane was questioned in detail about the numerous investigations of the Parker family, including those from May 31, 1996, March 3, 1999, June 28, 2000, September 5, 2001, October 10, 2001, December 17, 2001. All of these investigations were closed because the abuse allegations were unsubstantiated. Defendant did not object to Urbane's testimony below, and does not challenge that testimony on appeal. Because testimony about the March 1999 investigation was placed before the jury without objection through another witness, defendant cannot demonstrate that defense counsel's failure to object to Weiss-Hill's testimony with respect to that investigation affected the outcome of the trial. *Id.* Her claim of ineffective assistance of counsel fails.

III

Defendant also argues that the prosecutor committed misconduct on several occasions by appealing to the jurors' sympathy at trial. The issues are unpreserved because defense counsel did not object to the claimed instances of misconduct. We therefore review this issue for plain error. *People v Aldrich*, 246 Mich App 101, 110; 631 NW2d 67 (2001), citing *People v Carines*, 460 Mich 750, 752-753, 764; 597 NW2d 130 (1999).

> To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights. The third requirement generally requires a

> showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings. "It is the defendant rather than the Government who bears the burden of persuasion with respect to prejudice." Finally, once a defendant satisfies these three requirements, an appellate court must exercise its discretion in deciding whether to reverse. Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error "'seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings' independent of the defendant's innocence." [*Id*. at 763 (citations omitted).]

No error requiring reversal will be found if the prejudicial effect of the prosecutor's improper conduct could have been cured by a timely instruction. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001).

Defendant first argues that the prosecutor appealed to juror sympathy when she questioned A.P.'s new adoptive mother about A.P.'s conduct after receiving a subpoena for trial. Although appeals to the jury to sympathize with the victims are improper, *id*. at 591-592, we disagree with defendant that the prosecutor's questions appealed to juror sympathy. A.P.'s new adoptive mother testified that A.P. was doing well in her environment and was not having problems. On cross-examination, defendant questioned the witness about A.P.'s aggressiveness and about a particular incident where A.P. bit the arm of a boy. The witness indicated that, when contacted by the police about the bite, she disclosed that A.P. was going through "a lot" because she had been subpoenaed for this case. The witness explained that when A.P. received subpoenas, difficulties would arise. For example, when A.P. received the trial subpoena, she became afraid and started sucking her thumb. On redirect, the prosecutor asked the questions now challenged on appeal, which followed up on themes elicited by defendant during cross-examination. The answers to the challenged questions provided information from which the prosecutor could dispute that A.P. was having difficulties because of underlying psychiatric issues. Rather, the difficulties could be the result of the impending court proceedings. The questioning, when considered in context, was designed to diffuse the notion that A.P. was an aggressive child who had not improved in her new home.

Defendant next argues that the prosecutor's questioning of defendant's expert psychotherapist was designed to garner sympathy for A.P. We disagree. On direct examination, the expert testified that the most dangerous person in the world to A.P. was defendant because defendant was a "safe" person to whom A.P. wanted to become attached. A.P. had learned that it was safer not to become attached to people. The expert, who never examined or assessed A.P. personally, concluded that A.P. was an undiagnosed schizophrenic, who was most afraid of people who did not hurt her.[5] The expert also testified that A.P.'s situation had not improved since she was placed with a new family. He claimed she was continuing to deteriorate, and he pointed to the fact that, during the month before trial, A.P. had regressed and started sucking her thumb, picking at herself, and hiding. The prosecutor asked the expert on cross-examination

[5] The expert acknowledged on cross-examination that no physician, including the psychiatrists who evaluated A.P., diagnosed her as a schizophrenic.

whether children who are "abused by the system" and are required to testify in court can be "re-abused by the process." She also asked whether, assuming abuse had occurred, A.P. would suffer from anxiety and would be afraid of the people who caused her injuries. Defendant's argument that these latter questions were designed to elicit sympathy for the victim is without merit. The questions were follow-up questions to test the expert's previous claims and conclusions, including his failure to relate A.P.'s regression to the court proceedings.

Defendant additionally argues that several portions of the prosecutor's closing argument appealed to the sympathy of the jurors. First, defendant claims that the prosecutor improperly argued that A.P. was doing fine until the trial approached. We disagree that the argument constitutes plain error. It was based on the evidence and inferences drawn from the evidence. In *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995), our Supreme Court stated:

> "[P]rosecutors are accorded great latitude regarding their arguments and conduct." They are "free to argue the evidence and all reasonable inferences from the evidence as it relates to [their] theory of the case." [Citations omitted.]

The prosecutor's argument was a factual argument based on the evidence. It was proper argument designed to refute the notion that A.P. suffered psychiatric difficulties and was not improving since being removed from defendant's home. Because the argument was not an improper appeal to juror sympathy, there is no plain error requiring reversal.

Second, defendant challenges statements made by the prosecutor at the end of her closing argument. The prosecutor asked the jury to let the victims and their older sister, T.P., know that "justice can be done" and "that somebody does believe them." She asked the jury to find defendant guilty. These comments were made after the prosecutor summed up her case. They were directed at defendant's theory that the children should not be believed. We do not find that the comments impermissibly appealed to the jurors' sympathy. Demanding justice does not constitute improper argument per se. *People v Crawford*, 187 Mich App 344, 354-355; 467 NW2d 818 (1991). The challenged comments were isolated, were not blatant appeals for sympathy, and came at the end of a lengthy closing argument based on the evidence and inferences. *Watson*, *supra* at 591. Moreover, the trial court subsequently instructed the jury that it must not let sympathy influence its decision, and that the lawyers' statements and arguments were not evidence. Under the circumstances, the challenged comments are not plain error requiring reversal.

Lastly, defendant argues that the closing comments by the prosecutor during her rebuttal argument constituted a blatant appeal for juror sympathy. We agree. The prosecutor argued:

> So in the end I just want to part by saying this case is all about that little twelve-year-old girl who sat in the basement. You can't know what it's like to sleep on a cold cement floor while your ribs are broken, your hands are broken, your feet, or your foot is broken, you're hungry, you've got pangs from hunger. She has chipped teeth. She's bruised. She itches her scabs. And she doesn't think she'll ever get out of that place. She doesn't think she deserves justice. She told. She trusted.

> And now we're trusting you to please end this two-year nightmare, and this pursuit of justice. Don't make her wait one more minute than she has to to finally put an end to this. Tell her you know.
>
> She didn't deserve that. She's not responsible. The defendant is.

Although the comments were based on the evidence presented, the overall statement was an impermissible appeal for sympathy. Nevertheless, reversal is not required. In order to prevail in her challenge, defendant bears the burden of persuasion with respect to prejudice. *Carines*, *supra*. She must demonstrate that the comments affected the outcome of the trial. *Id*. As previously discussed, the jury was instructed that sympathy could not influence its decision and that the lawyers' arguments were not to be considered as evidence in deciding the case. Moreover, there was overwhelming evidence against defendant. The isolated comments at the end of the prosecutor's rebuttal argument did not affect the outcome of defendant's trial.

IV

In a supplemental brief, defendant additionally argues that the trial court abused its discretion when it denied her pretrial motion to sever the charges. She argues that there was no single scheme or plan that would permit the charges to be tried together and, in the alternative, severance was required "to promote a fair determination of the defendant's guilt or innocence of each offense." MCR 6.120. The issue whether the charges were related is preserved because it was raised before and decided by the trial court. But the issue whether the charges should have been severed to promote a fair determination of defendant's guilt or innocence is not preserved, because this issue was not raised before or decided by the trial court.

The question whether the charges are related as defined in the court rule is a question of law that we review de novo. *People v Tobey*, 401 Mich 141, 149-151; 257 NW2d 537 (1977); *People v Abraham*, 256 Mich App 265, 271; 662 NW2d 836 (2003). The ultimate decision whether to sever charges that are related is reviewed for an abuse of discretion. *People v Duranseau*, 221 Mich App 204, 208; 561 NW2d 111 (1997).

MCR 6.120(B) provides that a trial court *must* sever unrelated offenses for separate trials upon a defendant's motion. Offenses are related if they are based on the same conduct or a series of connected acts *or acts constituting part of a single scheme or plan*. MCR 6.120(B)(1) and (2). In *Tobey*, *supra* at 151-152, the Court likened a series of "acts constituting parts of a single scheme or plan" to a situation where a cashier makes a series of false entries and reports, all of which are designed to conceal his thefts of money. In *Abraham*, *supra* at 272, this Court found that separate offenses were related under the following circumstances:

> [T]he shootings occurred within a couple of hours of each other in the same neighborhood, with the same weapon, and were part of a set of events interspersed with target shooting at various outdoor objects. Further, the same witnesses testified to a single state of mind applicable to both offenses.

In this case, the three victims, all of whom were adopted by defendant and lived in her home, told similar stories of abuse while living in defendant's house, including that defendant beat them, called them names, pulled them out of school for failing to do chores properly,

required them to sleep on the floor, and required them to eat from newspapers on the floor. Defendant referred to the children as "nothin' but checks," and instructed them about how they were to respond if questioned about their home situation. The children were afraid that, if they told authorities about defendant's conduct, they would get into more trouble with defendant. At trial, defendant's adopted children agreed that A.P. was singled out for harsher treatment than the other children. A.L.P. and C.P. both claimed that they harmed A.P. at defendant's direction because they were afraid of being punished if they did not comply. A.P.'s abuse was the subject of two of the criminal charges against defendant. The other two charges related to acts perpetrated by defendant against A.L.P. and C.P. We find that the circumstances of the offenses were clearly related under the plain language of MCR 6.120(B). The offenses were part of a single scheme or plan by defendant to adopt children, receive subsidies for doing so, and then control or discipline them through the use of physical force and abuse while scaring them into keeping quiet. Severance was not mandatory because the offenses were related. MCR 6.120(B); *Abraham*, *supra* at 272.

Additionally, we find no merit to defendant's argument that, even if severance was not mandatory, the trial court should have severed the charges in order to promote a fair determination of defendant's guilt or innocence of each offense. MCR 6.120(C) enables a trial court to sever related offenses in its discretion. *Abraham*, *supra*; *Duranseau*, *supra* at 208. Relevant factors in determining whether severance is appropriate include:

> [T]imeliness of the motion, the drain on the parties' resources, the potential for confusion or prejudice stemming from either the number of charges or the complexity or nature of the evidence, the potential for harassment, the convenience of witnesses, and the parties' readiness for trial. [MCR 6.120(C).]

While defendant's motion was timely, she did not demonstrate the existence of any potential jury confusion related to the number or complexity of the four charges. Moreover, separate trials on each of the charges would have drained the parties' resources and inconvenienced the witnesses, all of whom would have provided testimony at each trial. The testimony of each of the victims would have been admissible in separate trials to prove defendant's intent, scheme, plan, or system in doing an act, absence of mistake, and to refute the defense of fabrication. MRE 404(b); *People v Gould*, 225 Mich App 79, 84-85; 570 NW2d 140 (1997). In *Duranseau*, *supra*, this Court concluded that the trial court did not abuse its discretion in denying a motion to sever because the evidence pertaining to the other charges would have been admissible in each of the separate trials as evidence of intent. We similarly find no abuse of discretion in this case.

V

Defendant next argues that the trial court improperly scored offense variable (OV) 7, MCL 777.37, at 50 points. This issue is not preserved because defense counsel did not object to the scoring of OV 7 at sentencing. To the contrary, defense counsel specifically informed the trial court that she had "looked very closely" at the calculated guidelines and believed them to be accurate. MCL 769.34(10) provides that a party *shall not* challenge the scoring of the sentencing guidelines on appeal unless the party raises the issue at sentencing, in a proper motion for resentencing, or in a proper motion for remand filed with this Court. Nevertheless, a scoring error that results in a sentence outside the appropriate guidelines sentence range is appealable

regardless whether it was properly preserved.[6] *People v Kimble*, 470 Mich 305, 310-314; 684 NW2d 669 (2004). To be entitled to resentencing, however, defendant must show that a clear or obvious error occurred, which affected his substantial rights. *Id*. Defendant cannot make such a showing in this case.

A sentencing court has discretion with respect to the scoring of offense variables, provided that evidence of record supports a particular score. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). "Scoring decisions for which there is any evidence in support will be upheld." *Id*., quoting *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996). Offense variable 7 may be scored at 50 points if a victim is treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense. MCL 777.37(1)(a). Sadism is defined as conduct that subjects a victim to extreme or prolonged pain or humiliation and is inflicted to produce suffering or for the offender's gratification. MCL 777.37(3). The trial court scored the guidelines for defendant's conviction of first-degree child abuse against A.P. There is ample evidence to support the trial court's score of 50 points based on torture and excessive brutality perpetrated against A.P. by defendant. There was evidence that defendant withheld food from A.P., poured nail polish remover into her eyes, required her to dig and rub her eyes, repeatedly chained or had someone else chain her to a weight bench in a diaper, beat her with a broomstick or shovel handle, used a stick or hammer on her hands and toes, forced her to eat hot potatoes directly out of the oven, forced her brothers to hold her head under water, and held her neck down causing a seizure on at least one occasion. This evidence not only supports a finding of torture and excessive brutality, but the repeated nature of the victim's torture and humiliation over a prolonged time period also supports a finding of sadism. We affirm the scoring of 50 points for OV 7.

VI

Finally, defendant argues that she is entitled to resentencing because her lack of remorse and failure to admit guilt were considered by the sentencing court. We disagree. At sentencing, when arguing that the trial court should exceed the minimum sentence range under the legislative guidelines, the prosecutor made comments about defendant's hardened heart, her failure to apologize, and her denials of abuse. In response, defense counsel argued that it was improper for the trial court to consider whether a defendant is vindictive, hardened, or defiant, or whether a defendant has maintained her innocence. Defense counsel requested that the trial court not exceed the guidelines and, instead, sentence defendant at the lower end of the guidelines range. The trial court sentenced defendant within the guidelines, although at the high end. In doing so, it indicated that the factors it was considering were those "taken up in the guidelines." It is evident from a review of the record that the trial court did not consider the extraneous factors argued by the prosecutor. The record does not support defendant's contention that the trial court sentenced defendant based on improper considerations, specifically her refusal to admit guilt.

[6] Defendant's total offense variable score was 111 points. If 50 points was improperly scored for OV 7, the total offense variable score would be 61 points, which would place defendant in offense variable level V, not level VI as scored by the trial court. MCL 777.63.

More importantly, MCL 769.34(10) provides that if a minimum sentence is within the appropriate guidelines sentence range, this Court shall affirm that sentence and shall not remand for resentencing absent an error in the scoring of the guidelines or inaccurate information relied upon in determining the defendant's sentence. In this case, defendant's sentence was within the appropriate guidelines range, there was no error in the scoring of the guidelines, and there has been no showing that the trial court relied on inaccurate information in determining defendant's sentence. We therefore affirm defendant's sentence.

We affirm.

/s/ Richard A. Bandstra
/s/ Janet T. Neff
/s/ Jane E. Markey